IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24428 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

AND

HONOURABLE MR.JUSTICE K.A. PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UDAYBHAI NARESHBHAI VORA - Petitioner(s)

Versus

STATE ELECTION OFFICER & 2 - Respondent(s)

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Appearance :

MR ND NANAVATI with MR HRIDAY BUCH for NANAVATY ADVOCATES for Petitioner(s) : 1,
None for Respondent(s) : 1 ,3.
MR AJ DESAI AGP for Respondent : 2

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.A. PUJ

Date : 28/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Leave to amend.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the

election of respondent No.3 as a councillor in Mehsana Municipality on the unreserved seat in ward No.8 and has also challenged by an amendment granted today the constitutional validity of Rule 9(a) and Rule 63(4) of the Gujarat Municipalities (Conduct of Election) Rules, 1994.

3. The elections to ward No.8 of Mehsana Municipality were held on 11.12.2005 and the results were declared on 13.12.2005. Three councillors were to be elected from ward No.8. Out of three seats, one was reserved for women, another seat was reserved for SEBC candidates and the third seat was a general seat, i.e. it was not reserved for any category. When the results were declared, the votes secured by different candidates were as under:-

1	Chiragbhai Gajendrakumar Barot	1408 votes
2	Nilaben Bharat Kumar Harde	1270 votes
3	Kulsumbibi Ibrahimbhai (respondent No.3)	1268 votes
4	Udaybhai Nareshbhai Vora (petitioner)	1193 votes
5	Yusufbhai Ibrahimbhai Motisara	1099 votes
6	Jaydevbhai Babulal Barot	1097 votes

There were also six other candidates who secured less than 1000 votes and it is not necessary to give particulars of those candidates.

4. Rule 63 of the Gujarat Municipalities

(Conduct of Election) Rules, 1994 reads as under:-

> "**63. Declaration of results**.- (1) When the counting of votes has been completed, the returning officer shall proceed to declare the result of the election in the following manner.
>
> (2) He shall first decide the result of the seat reserved for women by declaring elected to that seat the woman who has secured the greatest number of valid votes amongst women eligible to be elected to that seat.
>
> (3) He shall then decide the result of the seat reserved, if any, for Scheduled Castes or Scheduled Tribes or Other Backward Classes in that order by declaring elected to that seat the person, other than the person who has already been declared elected to the seat reserved for women, who has secured the highest number of valid votes amongst persons eligible to be elected to that reserved seat.
>
> (4) He shall then decide the result of the unreserved seat or seats as the case may be, by declaring elected the person or, where there are more than one such seat, the persons not exceeding the number of such seats, other than the persons who have already been declared elected to the reserved seats, who has or have secured the highest number of valid votes."
>
> (emphasis supplied)

5. In accordance with the aforesaid rules, the Election Officer first declared Smt. Nilaben Bharatkumar Harde as elected to the seat reserved for women. This was done under sub-rule (2) of Rule 63. The Election Officer then declared Chiragbhai Gajendrakumar Barot as declared elected to the seat reserved for SEBC candidate. This was done under sub-

rule (3) of Rule 63.

The only seat then remaining was the unreserved seat attracting sub-rule (4) of Rule 63. After excluding the candidates who were declared elected to the seat reserved for women and to the seat reserved for SEBC candidates, it was found that respondent No.3 Kulsumbibi Ibrahimkhan Babi had secured the highest number of valid votes - being 1268. The Election Officer accordingly declared respondent No.3 as elected to the unreserved seat.

6. The petitioner has challenged the aforesaid declaration of respondent No.3 having been elected to the unreserved seat on the ground that respondent No.3 having contested as a woman candidate and another woman candidate (Nilaben Bharatkumar Harde) having secured more votes -1270 as against 1268 obtained by respondent No.3, respondent No.3 cannot thereafter stake her claim for the unreserved seat.

7. Rule 9 of the Election Rules reads as under:-

> "**9. Classification of validly nominated candidates.-** The validly nominated candidates shall be classified into the following categories, namely:-
>
> (a) "**general woman candidate"** one who is entitled to be elected against a seat reserved for a general woman and an unreserved seat but none other;
>
> (b) "**Scheduled Caste woman candidate"** one who is

entitled to be elected against a seat reserved for a general woman or a seat reserved for a Scheduled Caste woman or a seat reserved for Scheduled Castes and an unreserved seat but none other;

(c) **"Scheduled Tribe woman candidate"** one who is entitled to be elected against a seat reserved for a general woman or a seat reserved for a Scheduled Tribe woman or a seat reserved for Scheduled Tribe and an unreserved seat but none other;

(d) **"Other Backward Class woman candidate"** one who is entitled to be elected against a seat reserved for a general woman or a seat reserved for an Other Backward Class woman or a seat reserved for Other Backward Classes and an unreserved seat but none other;

(e) **"Scheduled Caste male candidate"** one who is entitled to be elected against a seat reserved for Scheduled Castes and an unreserved seat but none other;

(f) **"Scheduled Tribe male candidate"** one who is entitled to be elected against a seat reserved for Scheduled Tribes and an unreserved seat but none other;

(g) **"Other Backward Classes male candidate"** one who is entitled to be elected against a seat reserved for Other Backward Classes and an unreserved seat but none other;

(h) **"general male candidate"** one who is entitled to be elected against an unreserved seat but none other."

(emphasis supplied)

8. When the attention of the learned counsel was invited to clause (a) of Rule 9, it was contended after amending the petition that the

provisions of Rule 9(a) and Rule 63(4) in so far as they provide that a woman candidate offering herself against a seat reserved for a general woman can also contest for an unreserved seat is unconstitutional and go beyond the provisions of Article 243T(3) of the Constitution and Section 6(3) of the Gujarat Municipalities Act 1963 (hereinafter referred to as “the Act”).

9. The attention of the learned Senior Counsel was also drawn to the decision of the Apex Court in **VV Giri vs. DS Dora, AIR 1959 SC 1318** laying down that the reservation of a seat in a double-member constituency cannot affect the basic position that the constituency is one and for returning representatives to the concerned body it is the same joint electorate that goes to the poll and that the claim of eligibility for the reserved seat does not exclude the claim for the general seat; it is an additional claim and both the claims have to be decided on the basis that there is one election from the double-member constituency.

10. In the aforesaid decision, the Apex Court was dealing with a situation which is similar to the fact situation in the present case. The parliamentary constituency of Parvatipuram in the State of Andhra Pradesh was a double-member constituency; one seat was reserved for the scheduled tribes and the other was general. In the General Election to the House of the People held in 1957 four candidates had been

nominated from the said constituency, namely, A, B C and D. For this constituency after the polling, the counting of votes disclosed that A, B, C and D had secured 1,24,039, 1,24,604, 1,26,792 and 1,18,968 votes respectively. In the result of the election it was announced that C had been elected to fill the reserved seat and B the general seat. A filed the Election Petition challenging the validity of B's election. He alleged that B had offered himself as a candidate for the reserved seat and as such he was not entitled to be elected for the general seat. A, thus, wanted the Tribunal to declare that the election of B under the Representation of the People Act, 1951, was void and that he (A) had himself been duly elected to the House of the People from the Parvatipuram Parliamentary Constituency for the general and non-reserved seat. In the aforesaid fact situation, the Apex Court held that there were no separate electorates, one for reserved seat and the other for unreserved seat, but the election was from the constituency as a whole and not by reference to two separate and distinct seats. The Court held that after C was declared duly elected to the reserved seat, the votes secured by the remaining candidates had to be considered before declaring the election for the unreserved seat and that was precisely what the returning officer had done when he declared that B had been duly elected to the said seat. The Apex Court also noted that illustration to Section 54(4) of the Representation of the People Act, 1951 had made the point absolutely clear.

11. Let us, therefore, refer to Section 54(4) of the said Act. Section 54 (1) provided that it shall apply in relation to any election in a constituency where the seats to be filled included one or more seats reserved for the scheduled castes or scheduled tribes. Sub-section (4) read thus;

> "If the number of contesting candidates qualified to be chosen to fill the reserved. seats exceeds the number of such seats, and the total number of contesting candidates also exceeds the total number of seats to be filled, a poll shall be taken; and after the poll has been taken, the returning officer shall first declare those who, being qualified to be chosen to fill the reserved seats, have secured the largest number of votes, to be duly elected to fill the reserved seats, and then declare such of the remaining candidates as have secured the largest number of votes to be duly elected to fill the remaining seats." On a fair and reasonable construction of this provision there can be no doubt that in a case like the present, after respondent 2 was declared duly elected to the reserved seat, the votes secured by the remaining three candidates had to be considered before declaring the election for the unreserved seat and that is precisely what the returning officer has done when he declared that respondent 1 had been duly elected to the said seat. The illustration to this sub-section makes this position absolutely clear. This is how illustration reads:
>
> > "At an election in a constituency to fill four seats of which two are reserved there are six contesting candidates A, B, C, D, E and F, and they secure votes in descending order. A securing the largest number. B, C and D are qualified to be chosen to fill the

> reserved seats, while A, E and F are not so qualified. The returning officer will first declare B and C duly elected to fill the two reserved seats, and then declare A and D (not A and E) to fill the remaining two seats."

Section 55 of the Representation of the People Act, 1951 reads as under:-

> **"55. Eligibility of members of Scheduled Castes or Scheduled Tribes to hold seats not reserved for those castes or tribes. -** For the avoidance of doubt it is hereby declared that a member of Scheduled Castes or of the Scheduled Tribes shall not be disqualified to hold a seat not reserved for members of those castes or tribes, if he is otherwise qualified to hold such seats under the Constitution and this Act or under the Government of Union Territories Act, 1963, as the case may be."

In para 16 of the decision in VV Giri's case, the Apex Court considered the challenge to the constitutionality of the aforesaid provision. It was contended that sub-section (4) was ultra vires since it was inconsistent with Articles 14 and 330 of the Constitution. Repelling the said challenge, the Apex Court held that it is obvious that the reservation of seats is intended to guarantee a minimum number of seats to the concerned category, therefore, if members of the reserved category secure additional seats by election to general unreserved seats, there was no repugnancy at all.

12. The only difference in the fact situation in

VV Giri case and the present one is that in the former, it was a two member constituency, while in the present case it is a three member constituency. Since there is no controversy about election to SEBC seat in the present case, if we keep it aside for the present and consider the petitioner's argument vis-a-vis the seat reserved for women and the unreserved seat, the following picture emerges:-

VV Giri case		**Present Case**		**Remarks**
Candidate	Votes	Candidate	Votes	
A	1,24,039	Petitioner	1097	
B (ST)	1,24,604	Respondent No.3 (Woman)	1268	Declared elected to unreserved seat
C (ST)	1,26,792	Nilaben Harde (Woman)	1270	Declared elected to reserved seat
D	1,18,968	Yusufbhai Motisara	1099	

13. The provisions of Rule 9 as well as Rule 63 embody the same principle as was underlying Sections 54(4) and 55 of the Representation of People Act, 1951. Hence, a woman candidate who offers herself for a seat reserved for women does not lose her claim to be considered for an unreserved seat. As mentioned in the decision of the Apex Court in the VV Giri case, it would be obvious that once the candidates declared elected to the reserved seats (one seat reserved for women and another seat reserved for SEBC in the instant case) are excluded, the unserved seat has to go to the candidate who has

secured the maximum number of votes amongst the other candidates. In the facts of the present case, respondent No.3 admittedly secured the maximum number of votes (and definitely more than the votes secured by the present petitioner) from out of the candidates who remained after Nilaben Harde was declared elected to the seat reserved for women and Chiragbhai Barot to the seat reserved for SEBC candidates. The declaration of the result by the Election officer is, therefore, in accordance with the provisions of Rules 9 and 63 of the Election Rules.

14. The learned counsel for the petitioner submitted that the provisions of Section 54 of the Representation of People Act, 1951 are deleted and, therefore, the decision in VV Giri case cannot have any applicability.

The provisions of Section 54 dealing with reservation in two member constituencies came to be deleted by the Amendment Act of 1961 on account of abolition of the two member constituencies. This is clear from the Statement of Objects and Reasons to the Representation of People (Amendment) Act, 1961 specifically stating that “the question of reservation of seats in single-member constituencies has been settled by the enactment of the Two-Member Constituencies (Abolition) Act, 1961.

When there are express provisions in the Election Rules embodying the same principle, the

constitutionality of which was upheld in VV Giri case (Supra), the decision in VV Giri case is a binding precedent for the principle laid down therein. Moreover, Rule 9 of the Election Rules embodies the same principle which is contained in Section 55 of the Representation of People Act, 1951 which still holds the field.

15. The contention urged on behalf of the petitioner based on the difference in the amount to be deposited by a candidate does not carry the petitioner's case any further. The relevant portion of Sub-rule (1) of Rule 17 reads as under :-

> “..... each candidate shall deposit ... ... with the returning officer the sum of two thousand rupees in cash, and no candidate shall be deemed to be duly nominated unless such deposit has been made;
>
> Provided that where the candidate is a woman or belongs to the Scheduled Castes or Scheduled Tribes or Other Backward Class the amount of deposit shall be reduced to two hundred and fifty rupees. ....”

A bare perusal of the above Rule makes it clear that the deposit depends upon the category to which the candidate belongs and not the seat for which a particular candidate is contesting elections. Hence, the amount required to be deposited by a woman candidate is less than the amount required to be deposited by a general male candidate, irrespective of the fact whether the votes which are going to be

secured by a woman candidate are going to be counted for a seat reserved for women and/or for an unreserved seat.

16. The submission made by the learned counsel for the petitioner that the provisions of Rule 9(a) and Rule 63(4) go beyond the provisions of Article 243T of the Constitution and Section 6 of the Act or that they are violative of Article 14 is also without any substance.

Rule 243T of the Constitution provides for reservation of seats in Municipal bodies. Clause (1) provides for reservation for Scheduled Castes and Scheduled Tribes in proportion to their population in the Municipal area, out of which at least one third seats shall be reserved for women belonging to the SC or ST, as the case may be. Clause (3) provides as under:-

> "(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.
>
> (4) & (5) .. .."

Clause (6) permits the State Legislature to provide for reservation in favour of other backward classes.

17. Sub-section (3) of Section 6 of the Act reads as under:-

> "(3) Out of the total number of seats of councillors in a municipality, there shall be reserved seats for Scheduled Castes, Scheduled Tribes, Backward Classes and Women as follows, namely :-
>
> (a) to (c) ... .
>
> (d) One-third (including the number of seats reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the backward classes) of the total number of seats to be filled by direct election in every municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a municipality in the prescribed manner.
>
> (e) .. .."

18. There is nothing in the aforesaid constitutional and statutory provisions to indicate that a candidate who has offered himself/herself for a reserved seat cannot be considered for an unreserved seat even where he/she has secured more votes than the other candidates after excluding those elected to the reserved seats. As already held in the aforesaid case of VV Giri vs. DS Dora (supra) the claim of eligibility for a reserved seat does not exclude the claim of the candidate for a general seat, it is an additional claim and both the claims have to be decided on the basis that there is one election from the multi-member constituency. Since

the reservation of seats is intended to guarantee a minimum number of seats to the concerned categories, therefore, if members belonging to the said categories secure additional seats by election to general unreserved seats, there is nothing unconstitutional or arbitrary about it.

19. In view of the above discussion, we do not find any merit in the petition. The petition is, therefore, summarily dismissed.

(M.S. SHAH, J.)

(K.A. PUJ, J.)

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